

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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Daphne L. Smith,

Plaintiff,

v.

Martin O' Malley,

Defendant.

Case No. 2:24-cv-00278-BNW

**ORDER**

Presently before the Court is Plaintiff Daphne L Smith's s application to proceed *in forma pauperis* (ECF No. 1), filed on February 2, 2024.

**I. In Forma Pauperis Application**

All parties instituting any civil action, suit, or proceeding in a district court of the United States must pay a filing fee. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Ms. Smith has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. ECF No. 1. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

The Court will next screen Plaintiff's complaint. ECF No. 1-1.

**II. Screening the Complaint**

**A. Standard of Review**

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2).<sup>1</sup> In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may

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<sup>1</sup> Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma pauperis* proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners[.]").

1 be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
2 § 1915(e)(2).

3 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for  
4 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
5 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient  
6 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*  
7 *v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a  
8 claim, all allegations of material fact are taken as true and construed in the light most favorable to  
9 the plaintiff. *Wylar Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)  
10 (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual  
11 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*  
12 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is  
13 insufficient. *Id.*

14 If a plaintiff’s complaint challenges a decision by the Social Security Administration,  
15 before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42 U.S.C.  
16 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam)  
17 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been  
18 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the  
19 claim”). Generally, if the SSA denies a claimant’s application for disability benefits, the claimant  
20 may request reconsideration of the decision. If the claim is denied at the reconsideration level, a  
21 claimant may request a hearing before an administrative law judge. If the ALJ denies the claim, a  
22 claimant may request review of the decision by the Appeals Council. If the Appeals Council  
23 declines to review the ALJ’s decision, a claimant may then request judicial review. *See generally*  
24 20 C.F.R. §§ 404, 416.

25 Once a plaintiff has exhausted administrative remedies, she may obtain judicial review of  
26 a SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*  
27 An action for judicial review of a determination by the SSA must be brought “in the district court  
28 of the United States for the judicial district in which the plaintiff resides.” *Id.* The complaint

1 should state the nature of plaintiff's disability, when plaintiff claims she became disabled, and  
2 when and how she exhausted her administrative remedies. The complaint should also contain a  
3 plain, short, and concise statement identifying the nature of plaintiff's disagreement with the  
4 determination made by the SSA and show that plaintiff is entitled to relief.

5 A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted  
6 her administrative remedies and timely filed a civil action. However, judicial review of the  
7 Commissioner's decision to deny benefits is limited to determining: (a) whether there is  
8 substantial evidence in the record as a whole to support the findings of the Commissioner, and (b)  
9 whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*  
10 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

#### 11 **B. Analysis**

12 Here, Ms. Smith alleges that Plaintiff's applications for supplemental security income was  
13 denied initially, upon reconsideration, and by the Administrative Law Judge ("ALJ") following a  
14 hearing. ECF No. 1-1 at 1-3. Plaintiff further alleges that on December 19, 2023, the Appeals  
15 Council denied the request for review, and, at that time, the ALJ's decision became the  
16 Commissioner's final decision. *Id.* at 3-4 Plaintiff filed this action on February 8, 2024, which is  
17 within the allowable period. Thus, it appears that Ms. Smith has exhausted the administrative  
18 remedies and timely commenced this action.

19 The complaint also indicates that Plaintiff resides within the District of Nevada and the  
20 nature of her disability. *Id.* at 1, 2.

21 Finally, the complaint includes sufficient facts to state a claim for relief, alleging that the  
22 ALJ's decision erred in several respects. *Id.* at 3.

23 Accordingly, Plaintiff alleges a cognizable claim upon which relief can be granted.

#### 24 **IT IS THEREFORE ORDERED** that

25 1. Plaintiff Daphne Smith's request to proceed *in forma pauperis* (ECF No. 1)  
26 is GRANTED. Plaintiff will not be required to pay the filing fee of \$402.00.

27 2. Plaintiff is permitted to maintain this action to conclusion without the  
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1 necessity of prepayment of any additional fees or costs or giving security for them. This Order  
2 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at  
3 government expense.

4 3. The Clerk of Court must file the complaint (ECF No. 1-1).

5 4. The Clerk of Court shall provide notice of this action to the Commissioner  
6 pursuant to Rule 3 of the Supplemental Rules for Social Security.

7 5. From this point forward, Plaintiff must serve on Defendant or, if  
8 appearance has been entered by an attorney, on the attorney, a copy of every pleading, motion, or  
9 other document submitted for consideration by the Court. Plaintiff must include with the original  
10 paper submitted for filing a certificate stating the date that a true and correct copy of the  
11 document was personally served or sent by mail to the Defendant or counsel for the Defendant.  
12 The Court may disregard any paper received by a District Judge or Magistrate Judge that has not  
13 been filed with the Clerk, and any paper received by a District Judge, Magistrate Judge, or the  
14 Clerk that fails to include a certificate of service.

15 DATED: February 16, 2024



16 BREND A WEKSLER  
17 UNITED STATES MAGISTRATE JUDGE  
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